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August 16, 2007

Via Certified Mail &
Via E-Mail – girlisfunky@gmail.com
Bernadette M. Cooper
[REDACTED]
Los Angeles, CA 90034

Re: Use of the Trademark “KLYMAXX”
CEASE & DESIST LETTER

Dear Ms. Cooper:

My services have been retained by Ms. Cheryl Cooley of “KLYMAXX” with regard to the above referenced subject. It is my client’s contention that she has a right to use the trademark for all uses within the music industry and related fields for the following reasons:

- 1) Ms. Cooley was one of the original members of the group from it’s inception in 1979;
- 2) She was a signatory to the original recording contract with Solar/Elektra dated January 1, 1981;
- 3) Once the group switched to the Constellation/MCA label she remained a recording and performing member;
- 4) In 1987, you left (“Leaving Member #1”) the group to pursue a solo musical career with MCA, Ms. Joyce Irby (#2) did the same for a solo career with Motown and what remained of the group with Ms. Cooley included continued to recording and performing as “Klymaxx”;
- 5) Shortly thereafter, following the recording of the last album “Maxx” for MCA, another group member Ms. Lynn Malsby (#3) just left –another “Leaving Member”;
- 6) By 1990, of those who originally formed the group, there were only Ms. Lorena Porter & my client; and Robbin Grider.
- 7) Also it should be noted that between the years 1981 and 1985 four (4) other members were dropped. Over the years the group size has ranged from a few as five (5) to as many as eight (8).

We are sure you are very much aware of the above events, but they are being recounted merely to show that my client was there from the very beginning, continued to remain a

member even after you departed and still continues to perform as such thru to this day. If anyone has a right to utilize the name “Klymaxx” it should be Ms. Cooley. In your decision to leave, you abandoned the group and those that were left carried on. There seemed to have been no problem with the use of the name at that time in 1987. The effect of abandonment is a well-established principle in law and not only in the music industry. I note that the contract that was signed by you with Solar provided for what would be the effect of one who leaves. Please note paragraph 20 thereof. This is a standard provision throughout the music industry and is in every group contract that I have ever seen and is always enforced. It states that such use is permitted.

There are musical acts dating back to at least the 1940’s that obviously do not even have any original members therein. There is an estimated 125 versions of the world famous “The Platters” that are at this time appearing throughout the world and that is happening even though one of the original members (Herb Reed) is still alive and performing as one of those 125 groups. The industry is replete with such examples – all legal. I am sure you know of many others yourself.

We hereby demand that all attempts to interfere with Ms. Cooley’s use of the name “Klymaxx” cease from the time of receipt of this letter forward. Please note that in at least one instance to date your efforts of interference have caused the loss of employment and resulted in financial loss due to a booking agent’s reluctance and fear of becoming involved in any controversy.

Additionally, demand is further made to cease and desist from making any false and disparaging remarks related to Ms. Cooley’s character and right to use the trademark. She will take all actions necessary to defend her legitimate business interests and legal rights.

If you have any questions, please feel free to call me.

Sincerely yours,

James G. Kirk, Esq.

JK/pls

cc: Ms. Cheryl Cooley